

# Why (Some) Expatriates Cannot Own Guns

January 16, 2018 - Phil Hodgen

I want to give you a slight detour from tax law to see a little-known Federal law that applies to U.S. citizens who renounce their nationality.

The topic is guns—former U.S. citizens cannot (legally) own them. The topic is interesting in its own right, but it is meta-interesting too:

- It shows how anti-expatriate fervor has seeped into Federal law generally; and
- How few people have seen this and care about it, either in specific application or for its implications.

You might not care about guns. You might be violently anti-gun (haha see what I did there?). But the propensity for ever-extending tendrils of Federal legislation might be of interest to you.

## People Who Renounce

The law is straightforward:

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person . . . who, having been a citizen of the United States, has renounced his citizenship[.]<sup>1</sup>

There are six ways for an individual to lose U.S. nationality,<sup>2</sup> but only two of those ways will result in a Federal lifetime ban on possession of firearms or ammunition:

*Renounced U.S. citizenship.*

(a) A person has renounced his U.S. citizenship if the person, having been a citizen of the United States, has renounced citizenship either –

(1) Before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. 1481(a)(5); or

(2) Before an officer designated by the Attorney General when the United States is in a state of war pursuant to 8 U.S.C. 1481(a)(6).<sup>3</sup>

The first of the two cited methods is by far the most common method for a U.S. citizen to expatriate: go to a U.S. diplomatic outpost abroad, do the magic paperwork, utter the magic incantations when prompted by the diplomatic officer, and pay the toll charge as you leave the system.<sup>4</sup>

## Irreversible

The next interesting point about this law is that the event of renunciation causes an irreversible lifetime ban on possession of firearms and ammunition. From the Preamble to the Regulations:

On the other hand, a person who has renounced his or her citizenship and has subsequently regained citizenship through naturalization would remain under firearms disabilities. Section 922(g)(7) of the Act makes it unlawful for any person “who \* \* \* has renounced his citizenship” to possess firearms and there is no exception for subsequent naturalization. A similarly worded disability was addressed by the Supreme Court in *Dickerson v. New Banner*, 460 U.S. 103, 116 (1983), where the Supreme Court held that a person who “has been” committed to a mental institution, but later cured and released, continues to have firearms disabilities.[5](#)

## **I Don’t Know Why**

I’m not sure why it seemed important to Congress to ban (some) expatriates from possessing firearms.

Green card holders who abandon green cards, then later become permanent residents again will be permitted to possess firearms.[6](#)

U.S. citizens who relinquish U.S. citizenship using the methodologies embedded in 8 U.S.C. § 1481(a)(1)-(4) can, if they become green card holders or naturalized citizens, possess firearms.

## **Explosives, Too (Truck Drivers Will Care)**

Thanks to [Patrick Cain at Global News](#) for flagging a related problem.

In an email to me, Patrick notes:

For what it’s worth: there was a suggestion on [Brock](#) a while back that being in [NICS](#), for a renunciant, meant that they can’t be licenced to transport hazardous materials across state lines, which constrains their ability to work as long-haul truckers in Canada, if that’s how they make a living. (Companies hiring truckers in Canada will often specify they will only hire people who can cross the U.S. border without issues.)

A small point, unless it’s your livelihood. Ironically, ‘truck drivers in Canada’ were often cited a few years ago as an example of folks it would be ridiculous to target overseas tax enforcement at.

See <http://www.logwell.com/tech/reg/safeexplactfactsheet.pdf>

The Safe Explosive Act (passed in 2002, shortly after you-know-what-happened) added some expatriates to the people who are forbidden to possess explosives:

It shall be unlawful for any person knowingly to distribute explosive materials to any individual who . . . having been a citizen of the United States, has renounced the citizenship of that person.[7](#)

To use Patrick’s example, let’s suppose you are a dispatcher for a Canadian trucking company. You have a delivery from Canada to the USA of something that falls within the definition of “explosives”. You assign the job to a truck driver who is a Canadian citizen, having renounced his U.S. citizenship some time ago.

The truck driver takes the load across the border into the United States. You, the dispatcher, have arguably committed a U.S. Federal crime: you distributed explosive materials to your fellow employee, a truck driver.

The risk, of course, is not limited to the dispatcher. The risk goes all the way to top management of that Canadian trucking company.

A sane trucking company, of course, would simply not hire any driver who has renounced U.S. citizenship.

## Matters To Only a Few

This obviously matters only to a tiny number of people. The overwhelming number of expatriates have no intention to ever live in the United States again, so the firearm prohibition is meaningless to them. This is, in my experience, a “number counted on the fingers of one hand” type of problem.

The law is interesting for me, however, as someone who has no intention of renouncing U.S. citizenship. I will live my life happily as a U.S. citizen and (probably) resident. I happen to think this is a legislated example of [I can tolerate anything except the outgroup](#) in action.

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1. [18 U.S.C. § 922\(d\)\(7\)](#). \_\_\_\_
  2. [8 U.S.C. §1481\(a\)](#). \_\_\_\_
  3. [27 C.F.R. § 478.11](#). \_\_\_\_
  4. Yes, it is an oddly medieval ritual; perhaps a secular incarnation of an excommunication. \_\_\_\_
  5. [Definitions for the Categories of Persons Prohibited From Receiving Firearms \(95R-051P\)](#), [TD ATF-391](#), effective August 26, 1997. \_\_\_\_
  6. [18 U.S.C. § 922\(d\)\(5\)\(B\)](#). \_\_\_\_
  7. [18 U.S.C. § 842\(d\)\(9\)](#). \_\_\_\_